

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HARRY T. COLLINS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-624-SLR
)	
LINDA HUNTER, WARDEN RAPHAEL)	
WILLIAMS, CORRECTIONAL)	
MEDICAL SYSTEMS, and)	
DR. DEROSIER,)	
)	
Defendants.)	

ORDER

WHEREAS, plaintiff, Harry T. Collins, a prisoner incarcerated at the Howard R. Young Correctional Institution ("HRYCI"), filed his original complaint pursuant to 42 U.S.C. § 1983, on August 24, 2005 (D.I. 2);

WHEREAS, on January 6, 2006, the court issued a service order, and additional service orders were entered by the court on June 7, 2006 and July 26, 2006 (D.I. 13, 34, 39);

WHEREAS, service has not yet taken place for newly added defendant Dr. Derosier, and plaintiff filed a new letter/motion to amend the complaint (D.I. 40);

WHEREAS, the amendment contains additional allegations against "medical" and moves to add a claim against the Sussex Violation of Probation Center (D.I. 37), and if the proposed amendment "is frivolous or advances a claim or defense that is legally insufficient on its face, the court may deny leave to amend, Harrison Beverage Co. v. Dribeck Importers, Inc., 133

F.R.D. 463, 469 (D.N.J. 1990);

WHEREAS, the Delaware Department of Correction is an agency of the State of Delaware, and the Sussex Violation of Probation Center, one of its facilities, is proposed as an additional defendant;

WHEREAS, absent a state's consent, the Eleventh Amendment bars a civil rights suit in federal court that names the state as a defendant, the State of Delaware has not waived its sovereign immunity under the Eleventh Amendment, and as an institution of an agency of the State of Delaware, the Sussex Violation of Probation Center is entitled to immunity under the Eleventh Amendment, Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981) (citing Alabama v. Pugh, 438 U.S. 781 (1978)); Ospina v. Department of Corr., 749 F.Supp. 572, 579 (D.Del. 1991); See e.g. Evans v. Ford, C.A. No. 03-868-KAJ, 2004 WL 2009362, *4 (D.Del. Aug. 25, 2004);

THEREFORE, at Wilmington this 31st day of July, 2006,
IT IS ORDERED that:

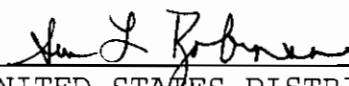
1. Plaintiff's motion to file an amended complaint (D.I. 40) is GRANTED in part and DENIED in part. The Sussex Violation of Probation Center IS NOT added as a defendant, the remaining amendments are allowed, and the amended complaint is filed instantner.

2. The clerk of the court shall cause a copy of this order

to be mailed to plaintiff.

3. This order shall supplement the court's service orders (D.I. 34, 39) dated June 7, 2006 and July 26, 2006, respectively.

4. The United States Marshal shall forthwith serve a copy of the complaint (D.I. 2), the four amended complaints (D.I. 6, 26, 37, 40), the June 7, 2006 order (D.I. 34), the July 26, 2006 order (D.I. 39), this order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon defendant(s) identified in plaintiff's 285 forms.


UNITED STATES DISTRICT JUDGE